

PETITION FOR WRIT OF HABEAS CORPUS: 28 USC §2254 (Rev. 9/10)  
ADOPTED BY ALL FEDERAL COURTS IN TEXAS

United States Courts  
Southern District of Texas  
FILED

AUG 11 2020

David J. Bradley, Clerk of Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

PETITION FOR A WRIT OF HABEAS CORPUS BY  
A PERSON IN STATE CUSTODY

FRANCISCO C. MARTINEZ  
PETITIONER  
(Full name of Petitioner)

TDCJ-CID, 6999 RETRIEVE RD., ANGLETON, TX  
CURRENT PLACE OF CONFINEMENT 77515

VS.

#01185238

PRISONER ID NUMBER

LORIE DAVIS, TDCJ-CID, DIRECTOR  
RESPONDENT  
(Name of TDCJ Director, Warden, Jailor, or  
authorized person having custody of Petitioner)

3:20-cv-263

CASE NUMBER  
(Supplied by the District Court Clerk)

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten and signed and dated by the petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except in answer to questions 11 and 20. Do not cite legal authorities. Any additional arguments or facts you want to present must be in a separate memorandum. The petition, including attachments, may not exceed 20 pages.
3. Receipt of the \$5.00 filing fee or a grant of permission to proceed *in forma pauperis* must occur before the court will consider your petition.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-CID, you must send in a certified *In Forma Pauperis* Data Sheet form from the institution in which you are confined. If you are in an institution other than TDCJ-CID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.

5. Only judgments entered by one court may be challenged in a single petition. A separate petition must be filed to challenge a judgment entered by a different state court.
6. Include all of your grounds for relief and all of the facts that support each ground for relief in this petition.
7. Mail the completed petition and one copy to the U. S. District Clerk. The "Venue List" in your unit law library lists all of the federal courts in Texas, their divisions, and the addresses for the clerk's offices. The proper court will be the federal court in the division and district in which you were convicted (for example, a Dallas County conviction is in the Northern District of Texas, Dallas Division) or where you are now in custody (for example, the Huntsville units are in the Southern District of Texas, Houston Division).
8. Failure to notify the court of your change of address could result in the dismissal of your case.

### PETITION

**What are you challenging?** (Check all that apply)

- |                                     |   |                                       |
|-------------------------------------|---|---------------------------------------|
| <input type="checkbox"/>            | A judgment of conviction or sentence, probation or deferred-adjudication probation. | (Answer Questions 1-4, 5-12 & 20-25)  |
| <input type="checkbox"/>            | A parole revocation proceeding.   | (Answer Questions 1-4, 13-14 & 20-25) |
| <input checked="" type="checkbox"/> | A disciplinary proceeding.  | (Answer Questions 1-4, 15-19 & 20-25) |
| <input type="checkbox"/>            | Other: _____  | (Answer Questions 1-4, 10-11 & 20-25) |

**All petitioners must answer questions 1-4:**

**Note:** In answering questions 1-4, you must give information about the conviction for the sentence you are presently serving, even if you are challenging a prison disciplinary action. (Note: If you are challenging a prison disciplinary action, do not answer questions 1-4 with information about the disciplinary case. Answer these questions about the conviction for the sentence you are presently serving.) Failure to follow this instruction may result in a delay in processing your case.

1. Name and location of the court (district and county) that entered the judgment of conviction and sentence that you are presently serving or that is under attack: 194<sup>th</sup> JUDICIAL DISTRICT  
COURTY, DALLAS COUNTY.
2. Date of judgment of conviction: AUGUST 6<sup>th</sup>, 2003
3. Length of sentence: LIFE
4. Identify the docket numbers (if known) and all crimes of which you were convicted that you wish to challenge in this habeas action: UNKNOWN

**Judgment of Conviction or Sentence, Probation or Deferred-Adjudication Probation:**

5. What was your plea? (Check one) ☐ Not Guilty ☐ Guilty ☐ Nolo Contendere
6. Kind of trial: (Check one) ☐ Jury ☐ Judge Only
7. Did you testify at trial? ☐ Yes ☐ No
8. Did you appeal the judgment of conviction? ☐ Yes ☐ No
9. If you did appeal, in what appellate court did you file your direct appeal? \_\_\_\_\_

\_\_\_\_\_ Cause Number (if known): \_\_\_\_\_

What was the result of your direct appeal (affirmed, modified or reversed)? \_\_\_\_\_

What was the date of that decision? \_\_\_\_\_

If you filed a petition for discretionary review after the decision of the court of appeals, answer the following:

Grounds raised: \_\_\_\_\_

Result: \_\_\_\_\_

Date of result: \_\_\_\_\_ Cause Number (if known): \_\_\_\_\_

If you filed a petition for a *writ of certiorari* with the United States Supreme Court, answer the following:

Result: \_\_\_\_\_

Date of result: \_\_\_\_\_

10. Other than a direct appeal, have you filed any petitions, applications or motions from this judgment in any court, state or federal? This includes any state applications for a writ of habeas corpus that you may have filed. ☐ Yes ☐ No

11. If your answer to 10 is "Yes," give the following information:

Name of court: \_\_\_\_\_

Nature of proceeding: \_\_\_\_\_

Cause number (if known): \_\_\_\_\_

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: \_\_\_\_\_

Grounds raised: \_\_\_\_\_

Date of final decision: \_\_\_\_\_

What was the decision? \_\_\_\_\_

Name of court that issued the final decision: \_\_\_\_\_

As to any second petition, application or motion, give the same information:

Name of court: \_\_\_\_\_

Nature of proceeding: \_\_\_\_\_

Cause number (if known): \_\_\_\_\_

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: \_\_\_\_\_

Grounds raised: \_\_\_\_\_

Date of final decision: \_\_\_\_\_

What was the decision? \_\_\_\_\_

Name of court that issued the final decision: \_\_\_\_\_

*If you have filed more than two petitions, applications or motions, please attach an additional sheet of paper and give the same information about each petition, application or motion.*

12. Do you have any future sentence to serve after you finish serving the sentence you are attacking in this petition? ☐ Yes ☐ No

(a) If your answer is "Yes," give the name and location of the court that imposed the sentence to be served in the future: \_\_\_\_\_

(b) Give the date and length of the sentence to be served in the future: \_\_\_\_\_

- (c) Have you filed, or do you intend to file, any petition attacking the judgment for the sentence you must serve in the future? ☐ Yes ☐ No

**Parole Revocation:**

13. Date and location of your parole revocation: \_\_\_\_\_
14. Have you filed any petitions, applications or motions in any state or federal court challenging your parole revocation? ☐ Yes ☐ No

If your answer is "Yes," complete Question 11 above regarding your parole revocation.

**Disciplinary Proceedings:**

15. For your original conviction, was there a finding that you used or exhibited a deadly weapon?  
☐ Yes ☒ No
16. Are you eligible for release on mandatory supervision? ☐ Yes ☒ No
17. Name and location of the TDCJ Unit where you were found guilty of the disciplinary violation:  
G.T. TERRELL UNIT, 1300 FM 655, ROSHARON TX 77583

Disciplinary case number: #20190072535

What was the nature of the disciplinary charge against you? "POSSESSION OF UNAUTHORIZED DRUGS"

18. Date you were found guilty of the disciplinary violation: NOVEMBER 21, 2018

Did you lose previously earned good-time days? ☐ Yes ☒ No

If your answer is "Yes," provide the exact number of previously earned good-time days that were forfeited by the disciplinary hearing officer as a result of your disciplinary hearing:  
N/A

Identify all other punishment imposed, including the length of any punishment, if applicable, and any changes in custody status:

RESTRICTIONS ON: 45 DAYS RECREATION; 45 DAYS CELL; 45 COMMISSARY;  
45 DAYS TELEPHONE SERVICE; REDUCTION ON THE EARNING OF GOOD TIME  
CLASS FROM S3 TO S4; 180 DAYS ON MEDIUM CUSTODY; CLASS. G2 TO G4.

19. Did you appeal the finding of guilty through the prison or TDCJ grievance procedure?  
☒ Yes ☐ No

If your answer to Question 19 is "Yes," answer the following:

Step 1 Result: AFFIRMED ON JANUARY 17, 2019

Date of Result: JANUARY 17, 2019

Step 2 Result: AFFIRMED

Date of Result: MARCH 5<sup>th</sup>, 2019**All petitioners must answer the remaining questions:**

20. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting them.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

- A. **GROUND ONE: THE CODE 12.2 OF THE TDCJ-GID DISCIPLINARY RULES AND PROCEDURES FOR OFFENDERS IS UNCONSTITUTIONALLY VAGUE, ~~UNREASONABLY~~ AND OVERBROADLY WRITTEN, AND IS CAPABLE TO INDUCE ARBITRARY AND DISCRIMINATORY**  
Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE CODE 12.2 OF THE TDCJ DISCIPLINARY RULES IS UNCONSTITUTIONALLY VAGUE AS IT FAILS TO PROVIDE SUFFICIENTLY EXPLICIT STANDARDS FOR THOSE WHO ENFORCE IT. MOREOVER, IT FAILS ADEQUATELY TO CONSTRAIN THE DISCRETION OF THE PRISON OFFICIALS WHO HAD THE POWER TO IMPOSE IT.

THE CODE 12.2 OF THE TDCJ RULES, FAILS TO PROVIDE DEFINITIONS FOR:

- B. **GROUND TWO: THE CODE 12.2 OF TDCJ RULES IS UNCONSTITUTIONAL VAGUE AS IT WAS APPLIED TO FRANCISCO MARTINEZ**

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

APPELLANT ARGUMENT IS THAT THE APPLICATION OF CODE 12.2 OF THE TDCJ RULES FOR BOTH "POSSESSION OF UNAUTHORIZED PRESCRIPTION DRUGS" AND "POSSESSION OF UNAUTHORIZED DRUGS" AS APPLIED TO HIM DURING THE DISCIPLINARY HEARINGS AND APPEAL PROCESS. APPELLANT ARGUMENTS IS THAT THERE IS NOT A WRITTEN CODE FOR "POSSESSION OF UNAUTHORIZED DRUGS"

C. GROUND THREE: DUE PROCESS VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

APPELLANT CLAIMS THAT HE WAS DENIED DUE PROCESS WHEN: (1) THE CHARGING OFFICER FILED A DISCIPLINARY OFFENSE ON A REGULATION THAT IS UNCONSTITUTIONALLY INFIRM, (2) PRISON OFFICIALS MISAPPLIED THE REGULATION TO THE FACTS OF THE APPELLANT'S OFFENSE, (3) THE CHARGING OFFICER FILED A FALSE REPORT AGAINST HIM, (4) HE WAS DENIED THE EFFECTIVE REPRESENTATION OF A

D. GROUND FOUR: THE IMPOSITION OF MAJOR PENALTIES FOR THE POSSESSION AUTHORIZED OF TWO PILLS FOR ALLERGIES SHOCKS THE CONSCIENCE IN VIOLATION OF THE EIGHT AMENDMENT OF THE UNITED STATES CONSTITUTION.

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE MEDIUM CUSTODY IS A CLASSIFICATION CUSTODY TO PUNISH INMATES FOR DISCIPLINARY VIOLATIONS. THIS CUSTODY IS MORE RESTRICTED, HAS LESS AMENITIES AND PRIVILEGES.

APPELLANT WAS TRANSFERRED TO THE WAYNE SCOTT UNIT' MEDIUM CUSTODY WING. THE MEDIUM CUSTODY WING HAD A LOT OF BROKEN WINDOWS, ONLY ONE BLANKET

21. Relief sought in this petition: OVERTURN THE DISCIPLINARY CASE #20190072535

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22. Have you previously filed a federal habeas petition attacking the same conviction, parole revocation or disciplinary proceeding that you are attacking in this petition? ☐ Yes ☒ No  
If your answer is "Yes," give the date on which each petition was filed and the federal court in which it was filed. Also state whether the petition was (a) dismissed without prejudice, (b) dismissed with prejudice, or (c) denied.

N/A

If you previously filed a federal petition attacking the same conviction and such petition was denied or dismissed with prejudice, did you receive permission from the Fifth Circuit to file a second petition, as required by 28 U.S.C. § 2244(b)(3) and (4)? ☐ Yes ☐ No

23. Are any of the grounds listed in question 20 above presented for the first time in this petition?  
☒ Yes ☐ No

If your answer is "Yes," state briefly what grounds are presented for the first time and give your reasons for not presenting them to any other court, either state or federal.

~~NEVER FILED THESE CLAIMS IN COURT, TEXAS DOES NOT AFFORD THE~~  
~~OPPORTUNITY TO CHALLENGE DISCIPLINARY CONVICTIONS IN STATE COURTS:~~

~~I FILED A §1983 CAUSE AND IS PENDING ON COURT, #3:19-CV-00236~~

24. Do you have any petition or appeal now pending (filed and not yet decided) in any court, either state or federal, for the judgment you are challenging? ☒ Yes ☐ No

If "Yes," identify each type of proceeding that is pending (i.e., direct appeal, art. 11.07 application, or federal habeas petition), the court in which each proceeding is pending, and the date each proceeding was filed. CAUSE UNDER 42 U.S.C. §1983, on a AUGUST 15, 2019

amended ON JULY 4<sup>TH</sup>, 2020, in THE SOUTHERN DISTRICT OF TX, GALVESTON DIVISION

25. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

- (a) At preliminary hearing: \_\_\_\_\_
- (b) At arraignment and plea: \_\_\_\_\_
- (c) At trial: \_\_\_\_\_
- (d) At sentencing: \_\_\_\_\_
- (e) On appeal: \_\_\_\_\_
- (f) In any post-conviction proceeding: \_\_\_\_\_



(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

**Timeliness of Petition:**

26. If your judgment of conviction, parole revocation or disciplinary proceeding became final over one year ago, you must explain why the one-year statute of limitations contained in 28 U.S.C. § 2244(d) does not bar your petition.<sup>1</sup>

APPELLANT ATTEMPTED TO FILE THIS CAUSE OF ACTION BEFORE MARCH, 2020,  
BUT FOR THE TDCJ LOCKDOWNS, AND THE COURTS ADMINISTRATIVELY CLOSED  
DUE TO THE PANDEMIC OF COVID-19, APPELLANT WAS NOT ABLE TO FILE IT  
ANY TIME SOONER.

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<sup>1</sup> The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), as contained in 28 U.S.C. § 2244(d), provides in part that:

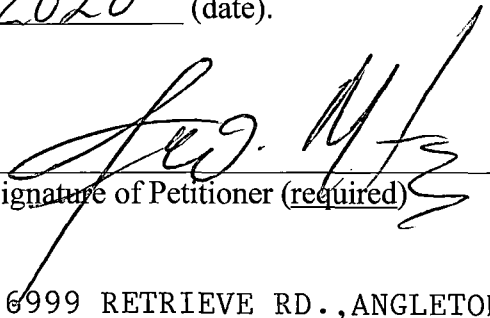
- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of-
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

\_\_\_\_\_  
Signature of Attorney (if any)  
\_\_\_\_\_

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct  
and that this Petition for a Writ of Habeas Corpus was placed in the prison mailing system on

July 21<sup>st</sup>, 2020 (month, day, year).

Executed (signed) on July 21<sup>st</sup>, 2020 (date).

  
\_\_\_\_\_  
Signature of Petitioner (required)

Petitioner's current address: WAYNE SCOTT UNIT, 6999 RETRIEVE RD., ANGLETON, TX 77515  
\_\_\_\_\_

**GROUND ONE:** TREATMENT.

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Supporting Facts: "POSSESSION," "AUTHORIZATION," AND "PRESCRIPTIO"  
ITS ONLY DEFINITION IS FOR DRUGS.

APPELLANT WAS CHARGED WITH "POSSESSION OF UNAUTHORIZED DRUGS," NAMELY,  
TWO DIPHENHYDRAMINE, (ALSO KNOWN AS BENADRYLS), UNDER CODE 12.2 OF THE  
TDCJ RULES. THE CHARGING OFFICER WAS AWARE THAT APPELLANT IN FACT WAS  
PRESCRIBED FOR THIS MEDICATION. THE CODE 12.2 STATES IN ITS ENTIRETY:  
"POSSESSION OF UNAUTHORIZED PRESCRIPTION DRUG," DEFINED AS "ANY ME-  
DICATION THAT CAN BE OBTAINED ONLY BY A PHYSICIAN'S PRESCRIPTION."  
THE DEFINITION FOR 'DRUGS' ENCOMPASS ANY PRESCRIPTION AUTHORIZED BY  
A PHYSICIAN. APPELLANT PRESENTED A COPY OF HIS MEDICATION PILL PASS  
DURING THE HEARING PROCEEDINGS, DUE TO THE VAGUENESS OF THE CODE HE  
WAS DENIED RELIEF.

THE CODE 12.2 IS CAPABLE TO INDUCE A DISCRIMINATORY TREATMENT:  
IN THE DISCIPLINARY CASE OF THE OFFENDER WINBREY, LAWRENCE, E. JR.,  
TDCJ #01123914, DISCIPLINARY CASE #20180100273, THE OFFENDER WAS  
CHARGED WITH THE POSSESSION UNAUTHORIZED DRUGS," NAMELY, SEVEN BENA-  
DRYLS," UNDER CODE 12.2 OF THE TDCJ RULES. THE OFFENDER WAS GIVEN  
LENIENT PENALTIES AND WAS REMAINED IN THE GENERAL POPULATION, WHILE  
APPELLANT WHO HAD PRESCRIPTION FOR THE MEDICATION WAS GIVEN MORE  
HARSH PENALTIES AND WAS REMOVED FROM THE GENERAL POPULATION. THE  
CODE 12.2 OF THE TDCJ RULES DOES NO MAKE ANY DIFFERENCE OF THOSE  
WHO PRESENT AUTHORIZED PRESCRIPTION AND THOSE WHO DOES NOT, NO STANDARDS OF  
GUIDANCE ARE SET OUT IN THIS CODE FOR PRISON OFFICIALS WHO ENFORCE  
THE CODE.

GROUND TWO

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Supporting Facts: AND THAT CODE 12.2 FAILS TO MAKE DISTINCTION OF BOTH "POSSESSION OF UNAUTHORIZED PRESCRIPTION DRUGS" AND "POSSESSION OF UNAUTHORIZED DRUGS," THEREFORE, APPELLANT ARGUES THE CODE 12.2 VIOLATES DUE PROCESS REQUIREMENTS OF THE FEDERAL AND STATE CONSTITUTIONS BY FAILING TO PROVIDE FAIR NOTICE THAT OFFENSE OF "POSSESSION OF UNAUTHORIZED DRUGS" IS CRIMINAL.

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ON OR ABOUT NOVEMBER 13, 2018, APPELLANT WAS CHARGED WITH A DISCIPLINARY OFFENSE OF "POSSESSION OF UNAUTHORIZED DRUG, NAMELY, TWO DIHENDRAMINE," (ALSO KNOWN AS BENADRYLS), UNDER CODE 12.2 OF THE TDCJ RULES. THE CHARGING OFFICER, R. DIAZ, WAS AWARE BEFORE HE WROTE THE OFFENSE THAT APPELLANT IN FACT WAS PRESCRIBED FOR THIS MEDICATION. MR. DIAZ, IN GROSSLY VIOLATION OF THE EXECUTIVE DIRECTIVE 3.76, EXCEEDED THE SCOPE OF HIS AUTHORITY, WHEN HE MANAGED AND ALTERED THE WRITTEN CODE OF 12.2 OF THE TDCJ RULES. MR. DIAZ OMITTED THE WORD 'PRESCRIPTION' FROM THE ORIGINAL WRITTEN CODE AND WROTE THE DISCIPLINARY OFFENSE FOR "POSSESSION OF UNAUTHORIZED DRUGS", A CODE THAT IS NOT WRITTEN IN THE TDCJ DISCIPLINARY RULES. BY ALTERING THE CODE 12.2 FROM ITS ORIGINAL WRITTEN VERSION, MR. DIAZ WROTE IT IN A MORE BROADLY MANNER OF LIABILITY. ASSUMING ARGUENDO THAT THERE IS A WRITTEN CODE FOR "POSSESSION OF UNAUTHORIZED DRUGS" APPELLANT CONTENDS THAT HE IS NOT GUILTY OF EITHER OFFENSE AS HE WAS PRESCRIBED FOR THE MEDICATION. PRISON OFFICIALS IN THE DEPARTMENT CLEARLY MISAPPLIED THE CODE 12.2 OF THE TDCJ RULES TO THE APPELLANT.

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COUNSEL SUBSTITUTE,(5) THE UNIT CLASSIFICATION COMMITTEE,(UCC), ALLOWED THE FORMATION OF NON-IMPARTIAL REVIEW BOARD.

ON OR ABOUT 13,2018,APPELLANT WENT TO THE PILL WINDOW AND GOT HIS MEDICATION,ON HIS WAY BACK TO THE HOUSE,HE WAS RANDOMLY PULLED OVER TO CONDUCT A STRIP SEARCH. DURING THE PATING DOWN,SERGEANT DIAZ FOUND TWO PILLS OF DIPHENHYDRAMINE,(ALSO KNOWN AS BENADRYLS).APPELLANT WAS PRESCRIBED FOR ANTI-ALLERGIES. THIS IS NOT A CONTROLLED SUBSTANCE. APPELLANT MADE AWARE MR. DIAZ THAT HE WAS GETTING THE PILLS TWICE A DAY AS PRESCRIBED. MR. DIAZ WROTE A DISCIPLINARY OFFENSE FOR "POSSESSION OF UNAUTHORIZED DRUGS,NAMELY,TWO DIPHENHYDRAMINE" UNDER CODE 12.2 OF THE TDCJ RULES.

SERGEANT DIAZ EXCEEDED THE SCOPE OF HIS AUTHORITY WHEN HE VIOLATED THE EXECUTIVE DIRECTIVE 3.76 AND ALTERED THE CODE 12.2 MR. DIAZ OMITTED THE WORD "PRESCRIPTION" FROM THE ORIGINAL WRITTEN CODE. MR. DIAZ WROTE THE DISCIPLINARY OFFENSE IN A MORE BROADLY MANNER OF LIABILITY.

TO THE EXTENT THAT THERE IS NOT A WRITTEN CODE FOR "POSSESSION OF UNAUTHORIZED DRUGS" IN THE TDCJ DISCIPLINARY RULES. THE DISCIPLINARY HEARING WAS HELD ON NOVEMBER 21,2018. DURING THE PROCEEDINGS APPELLANT PLEAD NOT GUILTY TO THE OFFENSE AND ASKED THE OFFENSE TO BE DISMISSED BASED ON THE FACT THAT HE HAD PRESCRIPTION FOR THE MEDICATION.MR, WATKINS WAS THE DISCIPLINARY HEARING OFFICER, (DHO),MR. WATKINS AND APPELLANT HAD THEIR DISAGREEMENT AS TO APPLYING CODE 12.2 TO THE FACTS OF THIS CASE. BASED ON THE SUPERIORITY KNOWLEDGE OF THE ADMINISTRATION OF REGULATIONS AND POLICIES,HE KNEW OR SHOULD HAVE KNOWN THAT THERE IS NOT A WRITTEN CODE FOR "POSSESSION OF UNAUTHORIZED DRUGS" IN THE TDCJ RULES.HE SHOULD HAVE DISMISSED THE CASE.

AT SOME TIME OF THE PROCEEDING,MR. WATKINS GOT MAD WITH THE APPELLANT FOR NOT ACCEPTING BEING GUILTY,AND FOR HIS DISAGREEMENT WITH HIM,MR, WATKINS PROCEEDED TO CONCLUDE THE PROCEEDING,STATED HIS STATEMENT IN THE RECORDING DEVICE. MR. WATKINS IMPOSED THE MINOR PENALTIES OF: 45 DAYS RESTRICTION ON:COMMISSARY,CELL,RECREATION AND TELEPHONE SERVICE,AND APPELLANT WAS DEMOTED FROM THE LINE CLASS FROM S3 TO S4. AND ABRUPTLY WALKED OUT FROM THE DISCIPLINARY HEARINGS OFFICE.

THE COUNSEL SUBSTITUTE FAILED TO PROVIDE APPELLANT ADEQUATE REPRESENTATION DURING THE HEARING PROCEEDINGS WHEN SHE WAS REMISS ON HER DUTIES TO THE APPELLANT. THE ASSISTANT WARDEN, MR. ANTHONY PATRICK, SIGNED AND AFFIRMED THE CONVICTION AND THE PENALTIES WHEN THE HEARING WAS OVER. HE PRESIDED AT THE APPEAL REVIEW ONE WEEK LATER.

THE APPEAL REVIEW WAS CONDUCTED ON NOVEMBER 27, 2018. THE UNIT CLASSIFICATION COMMITTEE, (UCC), WAS COMPOSED OF THE ASSISTANT WARDEN, A. PATRICK, THE UNIT CHIEF OF CLASSIFICATION, MS. A.S. HASTINGS, THE CORRECTIONAL OFFICER V, MRS. NINA JONES. BASED ON THEIR SUPERIORITY KNOWLEDGE ON THE ADMINISTRATION OF REGULATIONS AND POLICIES, THEY SHOULD HAVE KNOWN THAT THERE IS NOT A WRITTEN CODE FOR "POSSESSION OF UNAUTHORIZED DRUGS" IN THE TDCJ RULES.

PURSUANT TO THE TDCJ ADMINISTRATIVE DIRECTIVE 4.35 (IV)(A)(5), THEY WERE AUTHORIZED TO OVERTURN THE DISCIPLINARY CASE. PRIOR TO THIS APPEAL REVIEW, MR. PATRICK HAD SIGNED AND AFFIRMED THE CONVICTION AND THE PENALTIES IMPOSED TO THE APPELLANT, HE GAINED MORE DETAILS OF THE OFFENSE AND HE WAS AWARE THAT THE APPELLANT WAS IN FACT PRESCRIBED FOR DIPHENHYDRAMINE. MR. PATRICK UNLAWFULLY PARTICIPATED ON THIS APPEAL REVIEW, HIS PARTICIPATION SHOULD HAVE BEEN EXCLUDED FROM THE COMMITTEE BASED ON THE FACT WOULD NOT HAVE CHANGED HIS DECISION ON THE FACTS OF THE CASE, HE WOULD NOT HAVE APPLIED THE LAW ANY DIFFERENT MANNER AT THE APPEAL REVIEW WHEN HE SIGNED THE DISCIPLINARY HEARING REPORT.

MR. PATRICK VOTED TO REMOVE APPELLANT FROM THE GENERAL POPULATION WHEN HE IMPOSED THE MEDIUM CUSTODY CLASSIFICATION, HE PERSUADED THE COMMITTEE TO UPHOLD THE CONVICTION, THE PENALTIES AND TO REMOVE THE APPELLANT FROM THE GENERAL POPULATION.

CLEARLY DUE PROCESS WAS DENIED TO THE APPELLANT.

#### **GROUND FOUR**

Supporting facts (Do not argue or cite law.) )

WAS ISSUED TO THE APPELLANT. APPELLANT SUFFERED FOR THE COLDWEATHER UNNECESSARILY. THE DAYROOM HAS CAPACITY FOR 180 INMATES, THE MOST, IN A WING THAT HOUSED 144 INMATES, NO TOILET IS PROVIDED TO THE INMATES IN THE DAYROOM, ONLY ONE URINAL IS PROVIDED.

APPELLANT WAS PLACED IN A CELL THAT THE TOILET LEAKED, APPELLANT HAD TO CLEAN UP THE WATER WITH FECES. (SEE GRIEVANCE #2019074440).

APPELLANT WAS PUNISHED INJUSTLY UNDER A DISCIPLINARY RULE THAT IS UNCONSTITUTIONALLY INFIRM, ADDITIONALLY, PRISON OFFICIALS IN THE TDCJ MISAPPLIED THE DISCIPLINARY RULE TO MR. MARTINEZ CASE. THE IMPOSITION OF THE PUNISH TO WHICH HE WAS SUBJECTED, CLEARLY SHOCK THE CONSCIENCE OF THE EIGHT AMENDMENT TO THE UNITED STATES CONSTITUTION. THIS HONORABLE COURT SHOULD OVERTURN THE DISCIPLINARY OFFENSE FOR WHICH HE WAS PUNISHED.

TDCJ DISCIPLINARY REPORT AND HEARING RECORD  
 UNIT: R3 BNG: R02 046 JOB: JANITOR B DORM 1-2 IQ: 083  
 CLASS: 22 CUST: G2 PRIMARY LANGUAGE: ENGLISH LMHA RESTRICTIONS: NONE  
 GRDE: MA / JB OFF. DATE: 11/13/18 04:55 PM LOCATION: R3 BLDG LT'S OFFICE  
 TYPE: ID

## OFFENSE DESCRIPTION

ON THE DATE AND TIME LISTED ABOVE, AND AT R3 SECURITY OFFICE, OFFENDER:  
 MARTINEZ, FRANCISCO C, TDCJ-ID NO. 01185238, POSSESSED AN UNAUTHORIZED DRUG  
 NAMELY TWO DIPHENHYDRAMINE.

CHARGING OFFICER: R. DIAZ, SGT

SHIFT/CARD: 1 H

OFFENDER NOTIFICATION IF APPLICABLE INTERPRETER,  
 TIME/DATE NOTIFIED: 11/11/18 11-20-18 BY: (PRINT) P. Weaver

YOU WILL APPEAR BEFORE HEARING OFFICER 24 HOURS OR MORE AFTER RECEIPT OF THIS  
 NOTICE. DO YOU WANT TO ATTEND THE HEARING? YES NO IF NO, HOW DO YOU  
 PLEAD? GUILTY NOT GUILTY

OFFENDER NOTIFICATION SIGNATURE: X P. Weaver DATE: 11-20-18

BY SIGNING BELOW, YOU GIVE UP YOUR RIGHT TO 24 HOUR NOTICE AND AUTHORIZE THE  
 HEARING OFFICER TO PROCEED WITH THE HEARING.

OFFENDER WAIVER SIGNATURE: X P. Weaver DATE: 11-20-18

## HEARING INFORMATION

HEARING DATE: 11/21/18 TIME: 12:25 pm UNIT: R-3 FOLDER A FILE 44 DSFILE 244422

COUNSEL SUBSTITUTE AT HEARING: P.W. FOLDER FILE DSFILE

EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART  
 HEARING, (2) IF ACCUSED OFFENDER WAS CONFINED IN PRE-HEARING DETENTION MORE THAN  
 72 HOURS PRIOR TO HEARING, (3) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE  
 EVIDENCE STAGE, (4) IF ANY WITNESSES OR (5) DOCUMENTATION WAS EXCLUDED FROM  
 HEARING (6) IF OFFENDER WAS DENIED CONFRONTATION AND/OR CROSS-EXAMINATION OF A  
 WITNESS AT THE HEARING (7) IF HEARING WAS NOT HELD WITHIN SEVEN DAYS, EXCLUDING  
 WEEK ENDS AND HOLIDAYS, FROM THE OFFENSE DATE AND, (8) IF INTERPRETER USED:

(SIGNATURE) Investigator on Case worked with the

OFFENDER STATEMENT: I'm not guilty of the charge how it

IS written

OFFENSE CODES: 12.2

OFFENDER PLEA: (G, NG, DS) NONE NG

FINDINGS: (G, NG, DS) G

REDUCED TO REMOR (PRIOR TO DOCKET) (DOCKET) (HEARING) BY: (INITIAL)

IF GUILTY, EVIDENCE PRESENTED, CONSIDERED, AND REASON(S) FOR DETERMINATION OF

GUILT: A) ADMISSION OF GUILT, B) OFFICER'S REPORT, C) WITNESS TESTIMONY, D) OTHER.

EXPLAIN IN DETAIL: Officer's Report offender did not follow

the charges

## PUNISHMENT

LOSS OF PRIV (DAYS) REPRIMAND SOLITARY (DAYS)

\*RECREATION (DAYS) 45 EXTRA DUTY (HOURS) REMAIN LINE 3

\*COMMISSARY (DAYS) 45 CONT. VISIT SUSP. THRU REDUC. CLASS FROM 83 TO 5-4

\*PROPERTY (DAYS) CELL RESTR. (DAYS) 45 GOOD TIME LOST (DAYS)

\*OTS (DAYS) 45 SPECIAL CELL RESTR. (DAYS) DAMAGES/FORFEIT \$

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED:

Attempt to modify offender's behavior

CREDIT FOR PRE-HEARING DETENTION TIME? YES (DAYS) NO / NA

DATE PLACED IN PRE-HEARING DETENTION: NO HEARING LENGTH 6:51 (MINUTES)

OFFENDER SIGNATURE FOR RECEIPT OF FINAL REPORT: P. Weaver

HEARING OFFICER (PRINT) WARDEN REVIEWER SIGNATURE

(FORM I-47MA) CONTACT COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

(REV. 04-10) COMUNIQUESE CON SU CONSEJERO SUSTITUTO SI NO ENTIENDE ESTA FORMA

PW  
B



**CORRECTIONAL MANAGED HEALTH CARE  
MENTAL HEALTH OUTPATIENT SERVICES  
Triage Interview**

Patient Name: MARTINEZ, FRANCISCO C  
TDCJ#: 1185238

Date: 11/16/2018 14:33  
Facility: TERRELL (R3)

Age: 50  
Sex: male

DOB: 02/14/1968  
Race: HISPANIC

DOI: 9/4/2003

Patient Language: ENGLISH

**Most recent vitals from 9/20/2018:**

BP: 118 / 79 (Sitting)	Weight: 116 Lbs.	Height: 63 In.	BMI: 21
Pulse: 74 (Sitting)	Resp: 18 / min	Temp: 98.7 (Oral)	O2 Sat: 98% RA

**Allergies:** NO KNOWN ALLERGIES

**Current Medications:**

**ATORVASTATIN 20MG TABLET**  
1 TABS ORAL DAILY for 30 Days KOP

EXPIRATION DATE: 9/15/2019 12:43:00PM  
REFILLS: 2 / 11

LAST DATE GIVEN KOP: 10/28/2018 04:07:40PM  
ORDERING PROVIDER: OWUSU, KWABENA  
ORDERING FACILITY: TERRELL (R3)

**BODY LOTION**  
1 APPLICS TOPICALLY DAILY for 90  
Days KOP  
DERMATITI

EXPIRATION DATE: 12/19/2018 12:43:00PM  
REFILLS: 0 / 0

LAST DATE GIVEN KOP: 09/21/2018 04:39:22PM  
ORDERING PROVIDER: OWUSU, KWABENA

ORDERING FACILITY: TERRELL (R3)

**DIPHENHYDRAMINE 25MG  
CAPSULE**  
1 CAPS ORAL TWICE DAILY for 30 Days

EXPIRATION DATE: 12/04/2018 02:16:00PM  
REFILLS: 5 / 5

COMPLIANCE: 63.19 %

ORDERING PROVIDER: OWUSU, KWABENA  
ORDERING FACILITY: TERRELL (R3)

**LamivUDINE 300MG TABLET**  
1 TABS ORAL DAILY for 30 Days

EXPIRATION DATE: 1/31/2019 01:59:00PM  
REFILLS: 9 / 11

COMPLIANCE: 77.54 %  
ORDERING PROVIDER: BERGER, MARIA E  
ORDERING FACILITY: TERRELL (R3)

**NORVIR 100MG TABLET**  
1 TABS ORAL DAILY for 30 Days

EXPIRATION DATE: 1/31/2019 01:57:00PM  
REFILLS: 9 / 11

COMPLIANCE: 77.19 %  
ORDERING PROVIDER: BERGER, MARIA E  
ORDERING FACILITY: TERRELL (R3)

**PREZISTA 800MG TABLET**  
1 TABS ORAL DAILY for 30 Days

EXPIRATION DATE: 1/31/2019 01:58:00PM  
REFILLS: 9 / 11

COMPLIANCE: 77.19 %  
ORDERING PROVIDER: BERGER, MARIA E  
ORDERING FACILITY: TERRELL (R3)

**SERTRALINE 50MG TABLET**  
1 TABS ORAL EVERY EVENING for 30  
Days

EXPIRATION DATE: 7/08/2019 10:31:00AM  
REFILLS: 1 / 8

COMPLIANCE: 43.24 %  
ORDERING PROVIDER: HILLIARD, WANDA T  
ORDERING FACILITY: TERRELL (R3)

**TENOFOVIR DF 300MG TABLET**  
1 TABS ORAL DAILY for 30 Days

EXPIRATION DATE: 8/24/2019 02:53:00PM  
REFILLS: 2 / 11

COMPLIANCE: 58.75 %  
ORDERING PROVIDER: BERGER, MARIA E  
ORDERING FACILITY: TERRELL (R3)

**Active Problems:**

**Chronic Care:**

Human Immunodeficiency Virus [hiv] Disease First Observed 2/18/2004 02:01PM  
Hip Replacement Status First Observed 4/5/2006 12:56PM  
Hyperlipidemia, Unspecified First Observed 5/2/2012 05:28PM

**Dental:**

Hard Tissue Disease First Observed 7/11/2014 07:26AM  
Gingival/periodontal First Observed 8/4/2014 10:36AM  
Dental Examination First Observed 11/7/2014 09:09AM



## Texas Department of Criminal Justice

# STEP 1

## OFFENDER GRIEVANCE FORM

## OFFICE USE ONLY

Grievance #: \_\_\_\_\_

Date Received: \_\_\_\_\_

Date Due: \_\_\_\_\_

Grievance Code: \_\_\_\_\_

Investigator ID #: \_\_\_\_\_

Extension Date: \_\_\_\_\_

Date Retd to Offender: \_\_\_\_\_

Offender Name: FRANCISCO C. MARTINEZ TDCJ # 01185238Unit: TERRELL UNIT Housing Assignment: 2PHD-28Unit where incident occurred: TERRELL UNIT

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? Patrick, Assistant Warden When? 11-27-2018What was their response? Admitted that I was prescribed medication.What action was taken? Found guilty, and affirmed prior restrictions, and changed to G4

State your grievance in the space provided. Please state who, what, when, where and the disciplinary case number if appropriate

Dear Warden: This grievance is to complain of the violations of Due Process and Due Course of Law in the disciplinary case #20190072535.

On or about Nov. 13, 2018, I was caught with two Diphenhydramine pills by Sgt. Diaz, however, I made Sgt. Diaz aware that I get them twice a day, he was aware that I was in the process to apply for the 'hardship transfer.' Although Sgt. Diaz was aware that I get the pills twice a day, he intentionally and maliciously wrote the offense of: possessed an unauthorized drug, namely two Diphenhydramine, thus preventing me to apply for the hardship.

Pursuant to TDCJ Disciplinary Rules and Procedures for Offenders, 1(C)(3) the offense was graded by J. Blake, the Major of the Terrell Unit, as a major disciplinary offense. However, no written explanation was given as to why it was graded to major disciplinary offense.

At the Court Hearing on Nov. 21, 2018, presided by Captain Watkins, I pleaded not guilty to the offense, and argued that the code 12.2 does not apply to the facts. AS code 12.2 targets and punish inmates who do not have authorized prescription at all, and that I have been prescribed the medication, thus, code 12.2 does not apply to the facts in this case. He got mad of me for having a different view of code 12.2.

While discussing the case with the substitute counsel, and request to Sgt. Diaz to testify, Captain Watkins proceeded to conclude the proceeding by recording his final conclusions, and turned off the recorded, and walked out from the office.

At the UCC hearing, the committee admitted that I was prescribed the medi-

cation. The UCC was composed of Patrick, Assistant Warden; Ms. Hastings, Chief of Unit Classification; and Captain Jones. I also argued that code 12.2 does not apply to the facts in my case. They engaged in their own arguments at the same time that I could not rebut each of their argument. However, I was found guilty and my custody status was changed to G4.

I have a liberty interest in being free from major disciplinary cases to apply for the 'hardship transfer'. Sgt. Diaz intentionally and maliciously truncated the opportunity that I have to apply for the hardship transfer.'

Due Process and Due Course of Law have been violated through the entire process.

**Action Requested to resolve your Complaint.**

Dismiss the disciplinary case #20190072535, and have the record expunged from the TDCJ files, restore the privilege rights, and the G4 custody overturned

Offender Signature: Joe M/E #1185238 Date: December 4<sup>th</sup>, 2018

Grievance Response:

Signature Authority: \_\_\_\_\_ Date: \_\_\_\_\_

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: \*Resubmit this form when the corrections are made.

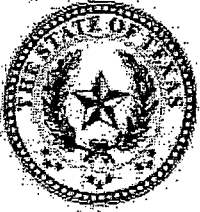
- ☐ 1. Grievable time period has expired.
- ☐ 2. Submission in excess of 1 every 7 days. \*
- ☐ 3. Originals not submitted. \*
- ☐ 4. Inappropriate/Excessive attachments. \*
- ☐ 5. No documented attempt at informal resolution. \*
- ☐ 6. No requested relief is stated. \*
- ☐ 7. Malicious use of vulgar, indecent, or physically threatening language. \*
- ☐ 8. The issue presented is not grievable.
- ☒ 9. Redundant, Refer to grievance # 2019041893
- ☐ 10. Illegible/Incomprehensible. \*
- ☐ 11. Inappropriate. \*

IGI Printed Name/Signature: APRIL A. CRUZ

Application of the screening criteria for this grievance is not expected to adversely affect the offender's health.

Federal Signature Authority: \_\_\_\_\_

OFFICE USE ONLY	
Initial Submission	UGI Initials: <u>AC</u>
Grievance #: <u>2019041893</u>	
Screening Criteria Used: <u>#9</u>	
Date Recd from Offender: <u>DEC 06 2018</u>	
Date Returned to Offender: <u>DEC 06 2018</u>	
<b>2<sup>nd</sup> Submission</b>	UGI Initials: _____
Grievance #: _____	
Screening Criteria Used: _____	
Date Recd from Offender: _____	
Date Returned to Offender: _____	
<b>3<sup>rd</sup> Submission</b>	UGI Initials: _____
Grievance #: _____	
Screening Criteria Used: _____	
Date Recd from Offender: _____	
Date Returned to Offender: _____	



**Texas Department of Criminal Justice**  
**STEP 2** **OFFENDER**  
**GRIEVANCE FORM**

**Offender Name:** FRANCISCO C. MARTINEZ **TDCJ #** 01185238  
**Unit:** WAYNE SCOTT **Housing Assignment:** C!-14 B  
**Unit where incident occurred:** TERRELL UNIT

OFFICE USE ONLY	
Grievance #:	2019041893
UGI Recd Date:	FEB 07 2019 FEB 12 2019
HQ Recd Date:	
Date Due:	03-09-2019
Grievance Code:	910
Investigator ID#:	I2589
Extension Date:	

*You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.*

**Give reason for appeal (Be Specific).** *I am dissatisfied with the response at Step 1 because...*

The Step 1 grievance was returned to the inmate on Feb 01 and received it at the Scott unit on February 4<sup>th</sup>, 2019. The response on the Step 1 is without merits, neither the disciplinary report nor the Step 1 grievance specify why the evidence that I presented did not refute the offense report or the evidence, neither states how the evidence at the hearing outweighs the evidence that I presented. As a matter of law I was entitled to an adequate notice of the charge. In this case Sgt. Diaz charged with "POSSESSION OF UNAUTHORIZED DRUG, NAMELY, TWO Diphenhydramine," and under the definition of this code (12.2) all I was required is to prove that I had prescription authorized by a physician, which it was proved before, at the hearing and at the hearing. It is clear that prison officials conspired in the finding of guilty and to hold the finding of guilty. The Step 1 does not dispute the denial to call the charging officer. The assistance of counsel substitute was futile as she was remiss in her duties, Counsel substitute failed to help during the proceedings. I also presented clearly violations of due process in the Step 1 grievance #2019046304 which was rejected by the grievance investigator at the Terrell Unit. Also I was denied Equal Protections of the Law in that I was treated in a discriminatory manner throughout the process: In the similar case of the offender Wimbrey, Lawrence E. Jr. TDCJ # 01123914 disciplinary case # 20180100273, the offender was in possession of seven (7) Diphenhydramine 50 mgs. (Also known as Benadryls) he did not have prescription, plead guilty to the offense, was given 30 days restrictions on rec, commissary, OTS, Cell, contact visits till 01/20/18. The hearing officer was also Capt. Watkins

I-128 Front (Revised 11-2010) **YOUR SIGNATURE IS REQUIRED ON BACK OF THIS FORM** (OVER)

**COPY**

Appendix G



The offender's custody status was not demoted. By contrast I had prescription to the drug, I plead not guilty, I was given 45 days restriction on: rec, cell, commissary and OTS (telephone) S3 to S4 and my custody was demoted to medium custody (G4). Therefore, there were clearly constitutional violations to the 4<sup>th</sup>, 14<sup>th</sup> Amendments to the U.S. Constitution. A clearly conspiracy from State prison officials

Offender Signature:

Joe M. #1185238

Date:

February 5<sup>th</sup>, 2019

Grievance Response:

Disciplinary Case #20190072535 and all related investigative documentation has been reviewed. The investigation finds that sufficient evidence was presented to support the 12.2 charge and finding of guilt. All due process requirements were satisfied and the punishment imposed was within agency guidelines. No further action warranted.

Signature Authority:

**B. BARNETT**

B. Barnett

Date:

3-5-19

Returned because: \*Resubmit this form when corrections are made:

- ☐ 1. Grievable time period has expired.
- ☐ 2. Illegible/Incomprehensible.\*
- ☐ 3. Originals not submitted.\*
- ☐ 4. Inappropriate/Excessive attachments.\*
- ☐ 5. Malicious use of vulgar, indecent, or physically threatening language.
- ☐ 6. Inappropriate.\*

CGO Staff Signature:

## OFFICE USE ONLY

Initial Submission

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

2<sup>nd</sup> Submission

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

3<sup>rd</sup> Submission

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_



## Texas Department of Criminal Justice

STEP 1

OFFENDER  
GRIEVANCE FORM

Offender Name: FRANCISCO C. MARTINEZ TDCJ # 01185238  
 Unit: TERRELL Housing Assignment: B2-46 C-1-14-B  
 Unit where incident occurred: TERRELL UNIT

## OFFICE USE ONLY

Grievance #: 2019041893  
 Date Received: NOV 27 2018  
 Date Due: 12-27-18  
 Grievance Code: 410  
 Investigator ID #: 21043 J1986  
 Extension Date: 1/26  
 Date Retd to Offender: FEB 01/19

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? Captain Watkins When? 11-21-2018

What was their response? CONCEDED I HAVE PRESCRIBED MED., CONCEDED NO CODE FOR: UNAUTH POSSES

What action was taken? FOUND GUILTY/ASSESSED 45 days rest, on: comm, cell, rec, OTS; S3 to S4

State your grievance in the space provided. Please state who, what, when, where and the disciplinary case number if appropriate

DEAR WARDEN: ON OR ABOUT NOVEMBER 13, 2018, I WAS PULLED OVER TO THE SIDE BY SGT. DIAZ. IN THE COURSE OF PATH SEARCH HE FOUND TWO PILLS OF DIPHENHYDRAMINE.

SGT. DIAZ WAS AWARE THAT I GET DIPHENHYDRAMINE TWICE A DAY. SGT. DIAZ CHARGED ME WITH CODE 12.2 OF THE TDCJ RULES. STATING IN THE REPORT: POSSESSED AN UNAUTHORIZED DRUG, NAMELY TWO DIPHENHYDRAMINE. I PLEAD NOT GUILTY TO THE CHARGE.

SARGEANT DIAZ ATTACHED A COPY OF THE MEDICATION PILLPASS TO THE REPORT, AND HIGHLIGHTED THE PRESCRIBED MEDICATION. THEREFORE IS UNDISPUTED THAT IN FACT I WAS PRESCRIBED MEDICATION FOR DIPHENHYDRAMINE.

CODE 12.2 OF THE TDCJ INMATES DISCIPLINARY HANDBOOK STATES:

"USE OR POSSESSION OF UNAUTHORIZED DRUGS."

THE DEFINITION OF THIS CODE STATES:

"ANY MEDICATION THAT CAN BE OBTAINED ONLY BY A PHYSICIAN'S PRESCRIPTION."

CLEARLY THE WORDING OF THIS CODE IS INTENDED TO TARGET AND PUNISH THOSE INMATES WHO DO NOT HAVE PRESCRIBED MEDICATION AT ALL.

AT THE COURT HEARING ON 11-21-2018, CONDUCTED BY CAPTAIN WATKINS, I PLEADED NOT GUILTY TO THE CHARGE AND REQUESTED THE CASE TO BE DISMISSED. I ALSO SUBMITTED A COPY OF THE MEDICATION PILL PASS AS EVIDENCE, AND REQUESTED SGT. DIAZ TO TESTIFY. CAPTAIN WATKINS CONCEDED THAT I HAVE PRESCRIBED FOR DIPHENHYDRAMINE, BUT CONCEDED THAT THERE IS NO WRITTEN CODE FOR UNAUTHORIZED POSSESSION OF DRUGS. CONTRARY TO THE CAPTAIN'S CONCLUSION IN THE REPORT, I SUBMITTED EVIDENCE AND CLEARLY REFUTED SARGEANT'S REPORT AND THE CHARGE.

THE EVIDENCE CLEARLY SUPPORTS THAT I HAVE BEEN PRESCRIBED DIPHENHYDRAMINE.

AT THE TIME OF THE OFFENSE ,THEREFORE,THE CHARGE IN THIS CASE  
TO THE FACTS SHOULD NOT HAVE BEEN APPLIED.

IF SARGEANT DIAZ WOULD HAVE CHARGED WITH "UNAUTHORIZED POSSESSION OF DRUGS."  
HE WOULD HAVE MEET THE VIOLATION OF ANY OTHER WRITTEN CODES.

BECAUSE OF THE MISINTERPRETATION OF CODE 12.2 TO THE FACTS IN THIS CASE,  
THE CASE SHOULD BE DISMISSED AS CAN'T BE APPLIED TO THE FACTS.

*Case # 20190072535 should be dismissed*

**Action Requested to resolve your Complaint.**

EXPUNGE THE DISCIPLINARY CASE FROM THE TDCJ'S FILE, WITH RESTORATION OF ALL  
RIGHTS AND PRIVILEGES, PLACE BACK TO THE S3 STATUS.

Offender Signature: *[Signature]* / 1185238

Date: *Nov. 26, 2018*

Grievance Response:

Major disciplinary case #20190072535 has been reviewed. The preponderance of credible evidence presented at your hearing supports the finding of guilt. No valid reason exists to warrant overturning this case. No further action is warranted.

Signature Authority: *[Signature]*

Date: *JAN 17 2019*

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: \*Resubmit this form when the corrections are made.

- ☐ 1. Grievable time period has expired.
- ☐ 2. Submission in excess of 1 every 7 days. \*
- ☐ 3. Originals not submitted. \*
- ☐ 4. Inappropriate/Excessive attachments. \*
- ☐ 5. No documented attempt at informal resolution. \*
- ☐ 6. No requested relief is stated. \*
- ☐ 7. Malicious use of vulgar, indecent, or physically threatening language. \*
- ☐ 8. The issue presented is not grievable.
- ☐ 9. Redundant, Refer to grievance # \_\_\_\_\_
- ☐ 10. Illegible/Incomprehensible. \*
- ☐ 11. Inappropriate. \*

UGI Printed Name/Signature: \_\_\_\_\_

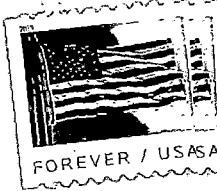
Application of the screening criteria for this grievance is not expected to adversely affect the offender's health.

Medical Signature Authority: \_\_\_\_\_

**OFFICE USE ONLY**

Initial Submission	UGI Initials: _____
Grievance #: _____	
Screening Criteria Used: _____	
Date Recd from Offender: _____	
Date Returned to Offender: _____	
<b>2<sup>nd</sup> Submission</b>	UGI Initials: _____
Grievance #: _____	
Screening Criteria Used: _____	
Date Recd from Offender: _____	
Date Returned to Offender: _____	
<b>3<sup>rd</sup> Submission</b>	UGI Initials: _____
Grievance #: _____	
Screening Criteria Used: _____	
Date Recd from Offender: _____	
Date Returned to Offender: _____	

Francisco C. Martinez  
#01185238  
Wayne Scott Unit  
6999 Retrieve Rd.  
Angleton, Texas 77515



Legal Mail

U.S. District  
Southern District  
Galveston  
Clerk of the Court  
601 Rose

AT TOP OF ENVELOPE TO THE RIGHT  
ADDRESS FOLDED AT DOTTED LINE

REGISTERED MAIL



0000 9647 3149